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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND)	Case No. 3:21-cv-8457
PLUMBING INC, individually and on)	
behalf of all others similarly situated,	)	<u>CLASS ACTION</u>
)	
Plaintiff,	)	COMPLAINT FOR VIOLATIONS
	)	OF:
vs.)	
	)	1. NEGLIGENT VIOLATIONS OF
	)	THE TELEPHONE CONSUMER
	)	PROTECTION ACT [47 U.S.C.
OSIRIS MARKETING GROUP &	)	§227 ET SEQ.]
SALES LLC DBA SPOTON	)	2. WILLFUL VIOLATIONS OF THE
FINANCIAL, and DOES 1 through 10,	)	TELEPHONE CONSUMER
inclusive, and each of them,	)	PROTECTION ACT [47 U.S.C.
	)	§227 ET SEQ.]
Defendants.	)	<u>DEMAND FOR JURY TRIAL</u>
)	

Plaintiff, ABANTE ROOTER AND PLUMBING (“Plaintiff”), individually and on behalf of all others similarly situated, allege the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action individually and others similarly situated seeking damages and any other available legal or equitable remedies resulting from

1 the illegal actions of OSIRIS MARKETING GROUP & SALES LLC
2 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on
3 Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
4 Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

5 **JURISDICTION & VENUE**

6 2. Jurisdiction is proper under 28 U.S.C. § 1331 because this action arises
7 under a federal statute, namely the Telephone Consumer Protection Act, 47 U.S.C.
8 § 227, *et seq.*

9 3. Venue is proper in the United States District Court for the
10 NORTHERN District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C.
11 § 1441(a) because Defendant does business within the state of California and
12 Plaintiff resides within this District.

13 **PARTIES**

14 4. Plaintiff, ABANTE ROOTER AND PLUMBING (“Plaintiff”), is a
15 rooting and plumbing business located in Emeryville, California and is a “person”
16 as defined by 47 U.S.C. § 153 (39).

17 5. Defendant, OSIRIS MARKETING GROUP & SALES LLC
18 (“Defendant”), is a corporate finance and business investing company and is a
19 “person” as defined by 47 U.S.C. § 153 (39).

20 6. The above-named Defendant, and its subsidiaries and agents, are
21 collectively referred to as “Defendants.” The true names and capacities of the
22 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
23 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
24 names. Each of the Defendants designated herein as a DOE is legally responsible
25 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
26 Complaint to reflect the true names and capacities of the DOE Defendants when
27 such identities become known.

1 7. Plaintiff is informed and believes that at all relevant times, each and
2 every Defendant was acting as an agent and/or employee of each of the other
3 Defendants and was acting within the course and scope of said agency and/or
4 employment with the full knowledge and consent of each of the other Defendants.
5 Plaintiff are informed and believe that each of the acts and/or omissions complained
6 of herein was made known to, and ratified by, each of the other Defendants.

7 **FACTUAL ALLEGATIONS**

8 8. Beginning in or around July 8, 2020, Defendant contacted Plaintiff on
9 its cellular telephones, numbers ending in -7210 and -1080 in an effort to sell or
10 solicit its services.

11 9. Defendant called Plaintiff numerous times, including but not limited
12 to three separate calls placed on July 8, 2020.

13 10. Defendant's calls constituted calls that were not for emergency
14 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

15 11. Defendant's calls were placed to telephone number assigned to a
16 cellular telephone service for which Plaintiff incur a charge for incoming calls
17 pursuant to 47 U.S.C. § 227(b)(1).

18 12. Plaintiff is not a customer of Defendant's services and has never
19 provided any personal information, including its cellular telephone numbers, to
20 Defendant for any purpose whatsoever. In addition, Plaintiff told Defendant at
21 least once to stop contacting them and Plaintiff has been registered on the Do-Not-
22 Call Registry for at least thirty (30) days prior to Defendant contacting it.
23 Accordingly, Defendant never received Plaintiff "prior express consent" to receive
24 calls using an automatic telephone dialing system or an artificial or prerecorded
25 voice on their cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

26 **CLASS ALLEGATIONS**

27 13. Plaintiff brings this action on behalf of itself and all others similarly
28 situated, as a member of the proposed class (hereafter "The Class") defined as

1 follows:

2
3 All persons within the United States who received any
4 telephone calls from Defendant to said person's cellular
5 telephone made through the use of any automatic
6 telephone dialing system or an artificial or prerecorded
7 voice and such person had not previously consented to
8 receiving such calls within the four years prior to the
9 filing of this Complaint

10 14. Plaintiff represents, and is a member of, The Class, consisting of All
11 persons within the United States who received any telephone calls from Defendant
12 to said person's cellular telephone made through the use of any automatic telephone
13 dialing system or an artificial or prerecorded voice and such person had not
14 previously not provided their cellular telephone number to Defendant within the
15 four years prior to the filing of this Complaint.

16 15. Defendant, its employees and agents are excluded from The Class.
17 Plaintiff do not know the number of members in The Class, but believes the Class
18 members number in the thousands, if not more. Thus, this matter should be
19 certified as a Class Action to assist in the expeditious litigation of the matter.

20 16. The Class is so numerous that the individual joinder of all of its
21 members is impractical. While the exact number and identities of The Class
22 members are unknown to Plaintiff at this time and can only be ascertained through
23 appropriate discovery, Plaintiff are informed and believe and thereon allege that
24 The Class includes thousands of members. Plaintiff allege that The Class members
25 may be ascertained by the records maintained by Defendant.

26 17. Plaintiff and members of The Class were harmed by the acts of
27 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
28 and Class members via their cellular telephones thereby causing Plaintiff and Class
members to incur certain charges or reduced telephone time for which Plaintiff and
Class members had previously paid by having to retrieve or administer messages

1 left by Defendant during those illegal calls, and invading the privacy of said
2 Plaintiff and Class members.

3 18. Common questions of fact and law exist as to all members of The
4 Class which predominate over any questions affecting only individual members of
5 The Class. These common legal and factual questions, which do not vary between
6 Class members, and which may be determined without reference to the individual
7 circumstances of any Class members, include, but are not limited to, the following:

- 8
- 9 a. Whether, within the four years prior to the filing of this
10 Complaint, Defendant made any call (other than a call made for
11 emergency purposes or made with the prior express consent of
12 the called party) to a Class member using any automatic
13 telephone dialing system or any artificial or prerecorded voice
14 to any telephone number assigned to a cellular telephone
15 service;
16 b. Whether Plaintiff and the Class members were damages
17 thereby, and the extent of damages for such violation; and
18 c. Whether Defendant should be enjoined from engaging in such
19 conduct in the future.

20 19. As a person that received numerous calls from Defendant using an
21 automatic telephone dialing system or an artificial or prerecorded voice, without
22 Plaintiff' prior express consent, Plaintiff are asserting claims that are typical of The
23 Class.

24 20. Plaintiff will fairly and adequately protect the interests of the members
25 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
26 class actions.

27 21. A class action is superior to other available methods of fair and
28 efficient adjudication of this controversy, since individual litigation of the claims
of all Class members is impracticable. Even if every Class member could afford
individual litigation, the court system could not. It would be unduly burdensome
to the courts in which individual litigation of numerous issues would proceed.

1 Individualized litigation would also present the potential for varying, inconsistent,
2 or contradictory judgments and would magnify the delay and expense to all parties
3 and to the court system resulting from multiple trials of the same complex factual
4 issues. By contrast, the conduct of this action as a class action presents fewer
5 management difficulties, conserves the resources of the parties and of the court
6 system, and protects the rights of each Class member.

7 22. The prosecution of separate actions by individual Class members
8 would create a risk of adjudications with respect to them that would, as a practical
9 matter, be dispositive of the interests of the other Class members not parties to such
10 adjudications or that would substantially impair or impede the ability of such non-
11 party Class members to protect their interests.

12 23. Defendant has acted or refused to act in respects generally applicable
13 to The Class, thereby making appropriate final and injunctive relief with regard to
14 the members of the California Class as a whole.

15
16 **FIRST CAUSE OF ACTION**

17 **Negligent Violations of the Telephone Consumer Protection Act**
18 **47 U.S.C. §227 et seq.**

19 24. Plaintiff repeat and incorporate by reference into this cause of action
20 the allegations set forth above at Paragraphs 1-23.

21 25. The foregoing acts and omissions of Defendant constitute numerous
22 and multiple negligent violations of the TCPA, including but not limited to each
23 and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

24 26. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et
25 seq., Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
26 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

27 27. Plaintiff and the Class members are also entitled to and seek
28 injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act
47 U.S.C. §227 et seq.**

28. Plaintiff repeat and incorporate by reference into this cause of action the allegations set forth above at Paragraphs 1-23.

29. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

30. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

31. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

**Negligent Violations of the Telephone Consumer Protection Act
47 U.S.C. §227 et seq.**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B); and
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act
47 U.S.C. §227 et seq.**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for

1 each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47
2 U.S.C. §227(b)(3)(C); and

- 3 • Any and all other relief that the Court deems just and proper.

4 Respectfully Submitted this 29th Day of October, 2021.

5 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

6
7 By: s/ Todd M. Friedman
8 Todd M. Friedman
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10 Attorney for Plaintiff
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